LR Item 3: Project Description
719 Washington Street RD Modification

I. Introduction

RKS 341 West 11th Street LLC (the "Applicant") seeks Chair administrative approval of a minor modification to the Restrictive Declaration dated June 17, 1980 and recorded in the Office of the City Register, New York County under Reel 558, Page 1002 (the "Restrictive Declaration"), which was recorded in connection with a special permit, granted in 1980, pursuant to Section 74-711 of the Zoning Resolution (C 800098 ZSM) (the "Special Permit").

The requested action is limited solely to the modification of administrative provisions of the Restrictive Declaration by addition of a surrender and nullification provision to the Restrictive Declaration (together with corresponding modifications to the "Maintenance Declaration" attached thereto as Exhibit II). Since the Special Permit is no longer required or relied upon, the modification would allow the Applicant to surrender the Special Permit and would provide that the Restrictive Declaration and Maintenance Declaration will be rendered null and void upon recordation of a surrender instrument and delivery of notice set forth therein. No modification of the Special Permit itself is sought.

Such surrender and nullification provisions are standard in restrictive declarations currently executed in connection with Section 74-711 special permits and reflect current agency practice.

II. Background

The Special Permit was granted by the City Planning Commission (the "CPC") on June 30, 1980 to permit the conversion of 719 Washington Street (Manhattan Block 634, Lot 47) (the "Building") from warehouse use to residential use within a C8-4 zoning district, where residential use was not permitted as of right.

In connection with the grant of the Special Permit, the Applicant's predecessor in interest executed the Restrictive Declaration, to which the Maintenance Declaration is attached as Exhibit II. These documents impose continuing maintenance and preservation obligations for the Building on the Declarants in furtherance of the purposes of Section 74-711.

Since issuance of the Special Permit, the zoning district in which the Building sits has been changed. The Building, which was formerly located in a C8-4 zoning district, is now located within a C1-6A zoning district, in which residential use is permitted as of right pursuant to the Zoning Resolution, including through conversion of existing buildings.

Because the Building is now located within a zoning district in which residential use is permitted, the Building no longer contains uses that require or rely upon the Special Permit, and may be operated in full compliance with the Zoning Resolution without the need for the Special Permit. Accordingly, the Special Permit is no longer being utilized, and the Restrictive Declaration no longer serves an operative zoning purpose.

Section 7 of the Restrictive Declaration provides that the Chair of the CPC and the Chair of the Landmarks Preservation Commission (the "LPC") may administratively approve minor modifications that are not deemed amendments requiring full Commission action.

Because the Restrictive Declaration predates current templates for restrictive declarations entered into pursuant to Section 74-711 approvals, it does not include the now standard mechanism allowing for self-effectuating nullification upon surrender of a special permit.

III. Proposed Modification

The Applicant seeks to modify the Restrictive Declaration by adding a new Section 10, and to modify the Maintenance Declaration by adding a new Article VI, establishing a surrender and nullification mechanism.

Proposed Section 10 would establish that, in the event the Applicant ('the Declarant' in the Restrictive Declaration) elects not to utilize and no longer rely upon the Special Permit, the Declarant may surrender the Special Permit to the City Planning Commission by recording an instrument effectuating such surrender and thereafter utilize the Building in accordance with the Zoning Resolution as though the Special Permit had not been granted.

Proposed Section 10, together with the corresponding proposed provision in Article VI of the Maintenance Declaration, would further provide that, upon recordation of an instrument effectuating such surrender, and upon delivery of certified copies of the recorded instrument to the CPC and the LPC, the Restrictive Declaration and the Maintenance Declaration attached thereto as Exhibit II shall be deemed null and void and of no further force and effect. Such recordation and notice would constitute a waiver of any right to utilize the Property pursuant to the Special Permit.

The proposed modification is procedural in nature and does not modify any use, bulk, or other zoning controls applicable to the Building, nor does it authorize any development or use not otherwise permitted as of right. Rather, it clarifies the process by which the Restrictive Declaration and the Maintenance Declaration may be nullified in connection with the voluntary surrender of the Special Permit.

The proposed provision aligns the Restrictive Declaration with the form of surrender and nullification provisions that are standard in contemporary Section 74-711 restrictive

declarations, and therefore constitutes a minor, ministerial update bringing the Restrictive Declaration into conformity with current agency practice rather than introducing any new substantive rights or obligations.

IV. Agency Review

The LPC, through their General Counsel, has confirmed that the Restrictive Declaration may be cancelled in light of the surrender of the Special Permit.

V. Conclusion

The proposed administrative modification is minor in scope, affects only the procedural operation of the Restrictive Declaration and the Maintenance Declaration, and facilitates the future surrender of a Special Permit that is no longer in use through a recorded instrument and notice procedure.

It does not result in any zoning modification or land use change and is limited to introducing a clear, approved mechanism for nullifying the Restrictive Declaration upon surrender of the Special Permit. This modification is consistent with current Section 74-711 restrictive declaration templates and simply updates an older instrument to reflect present day agency standards.

Accordingly, the Applicant respectfully requests Chair approval.